

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LILIAN GUTERRES,
Petitioner,

No. C 07-04966 SBA (PR)

ORDER OF DISMISSAL

v.

CALIFORNIA SUPERIOR COURT, et al.,
Respondents.

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis. She admits that she did not exhaust her state remedies before filing this petition.

Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b),(c)); Rose v. Lundy, 455 U.S. 509, 515-16 (1982). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A dismissal solely for failure to exhaust is not a bar to returning to federal court after exhausting available state remedies. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

Because Petitioner did not present her claims to the state supreme court for review, either in a petition for review or in a state petition for a writ of habeas corpus, her federal petition is unexhausted and must be DISMISSED. This dismissal is without prejudice to Petitioner returning to state court to exhaust her state remedies and then filing a new federal habeas corpus petition. Should she do so, she is advised to file her new federal habeas corpus petition as soon as possible after her state court proceedings have concluded. The Court makes no ruling at this time on the issue of the timeliness of any future federal petition.

1 Leave to proceed in forma pauperis is GRANTED (docket no. 3). All other pending
2 motions, including Petitioner's motion for appointment of counsel (docket no. 4), are DENIED as
3 moot. The Clerk of the Court shall enter judgment and close the file.

4 This Order terminates Docket nos. 3 and 4.

5 IT IS SO ORDERED.

6 DATED: 5/6/08


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA

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6
7 LILIAN GUTERRES,
8 Plaintiff,

Case Number: CV07-04966 SBA

CERTIFICATE OF SERVICE

9 v.

10 CALIFORNIA SUPERIOR COURT et al,

11 Defendant.
12 _____/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
14 Northern District of California.

15 That on May 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
16 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
17 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
18 office.

19 Lilian Guterres X06750 / SMCJ 294289
20 California State Prison - Chowchilla
P.O. Box 92
Chowchilla, CA 93610

21 Dated: May 8, 2008

22 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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